Title 9 Conditional Use Permit No.: 107-03-21
Date of Issue: December 17, 2020
Permit Expires: December 31, 2025

Permit Issued By:
Northwest Arctic Borough, Planning Department
c/o John Chase
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Kotzebue, AK 99752
Tel 907.442.8212 / 800.478.1110 extension 112
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Permittee:
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Permittee Contact Information:
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Project Description:

William G. Azar (AZAR) proposes to extract material at a location at Nimiuik Point. Surface sand and gravel extraction will be used to support the Kotzebue to Cape Blossom Road project and other public and private projects. Sand and gravel will be extracted from Nimiuik Point Subdivision Lot 2B.

AZAR proposes to commence project activities annually from June 1 through September 30.

Specific details of the project are contained in the permit application (21-02-107) and documents submitted by AZAR to the Borough Planning Department. These documents are incorporated into the Borough’s administrative record. Project Activities are summarized below.

Project Location:
The project location is at Township 16 North, Ranges 15 and 16 West, Sections 19, 24, 25, and 30, Kateel River Meridian, USGS Quad Map Kotzebue D-1. The site is located on Lot
2B of Nimiuk Point Subdivision Plat 98-8, situated on the western shoreline of Hotham Inlet (Kobuk Lake), approximately 18.23 miles southeasterly from the City of Kotzebue.

The project location is in the Borough’s Subsistence Conservation District and Kobuk-Selawik Lakes Subsistence sub-district.

The subject property is an undeveloped 51.50-acre piece of land bounded by Hotham Inlet to the east and tundra to the west. Privately owned sand and gravel extraction sites are located along the northern and southern property lines. A narrow sand and gravel beach is located along the eastern property line. An approximately 70-foot tall bluff, aligned approximately north-south, is present east of the western property line.

![Diagram of Nimiuk Point Lot 2B](image)

**Figure 1. Nimiuk Point Lot 2B**

**Gravel Extraction:**

Prior to extraction each year the site will be surveyed. Gravel extraction will begin from the north eastern corner working south and west in seven-acre cells. Approximately 100,000 cubic yards of sand and gravel will be extracted from each cell, 500,000 cubic yards total.

Topsoil and overburden removed from the extraction cell will be stockpiled onsite for reuse. Overburden will be removed with crawler dozers.

Extraction will be performed with a combination of hydraulic excavators and wheeled front-end loaders excavating the material. Some processing of the material will occur onsite with a screen plant, crusher, grizzly, and/or sand separator. The material will be transported across the site to a barge for transport to neighboring communities by either front-end loaders or articulated dump trucks. Temporary stockpiles of extracted material will be placed a minimum 100-foot away from waters of the U.S.

Material extraction is not planned to take place within a 100-foot setback/buffer from adjacent properties and Hotham Inlet. The extraction site will be graded such that stormwater and any other potential discharges cannot travel into wetlands onsite or offsite, and waters of the U.S.
All available material will be removed within a Cell prior to moving into the next Cell. If extraction temporarily ceases for more than 14-days or at end of the season, all disturbed areas will be regraded to stabilize slopes. The phases of extraction are described below.

SITE PLAN
Phase 1
The first phase of gravel extraction will begin at the northeastern corner of the project site (Cell 1) working south and west. After extraction is completed in Cell 1 extraction in Cell 2 and partial reclamation of Cell 1 will begin. The project staging area will remain in Cell 1 until the site is permanently closed.

Phase 2
The second phase of gravel extraction will begin at the northern end of Cell 2 working south. After extraction is completed in Cell 2 extraction in Cell 3 and reclamation of Cell 2 will begin.

Phase 3
The third phase of gravel extraction will begin at the eastern end of Cell 3 working west and south. After extraction is completed in Cell 3 extraction in Cell 4 and reclamation of Cell 3 will begin.

Phase 4
The fourth phase of gravel extraction will begin at the northern end of Cell 4 working south. After extraction is completed in Cell 4 extraction in Cell 5 and reclamation of Cell 4 will begin.

Phase 5
The fifth phase of gravel extraction will begin at the northern end of Cell 5 working south and east. After extraction is completed in Cell 5 reclamation of Cell 5 and the staging area will begin. No reclamation of the gravel barge ramp and haul road will occur.

RECLAMATION PLAN
Once a section of the mine site has been exhausted of borrow material, the slopes will be graded and stockpiled topsoil and overburden placed on the slopes. Topsoil and overburden will be placed on the slopes with an excavator and bulldozer. This process will provide even coverage, facilitate vegetation growth, and minimize erosion until vegetation is established. Natural vegetation and/or seed will be placed on the reclaimed slopes. After the pit floor is filled with groundwater, no topsoil or overburden will be placed in the water.

Reclamation will take place at the end of the extraction period, once all aggregates are exhausted. Completed extraction and excavation results in a lake, approximately six feet average depth.

The slopes of the site will be maintained at a 2 horizontal to 1 vertical (2:1) slope at all times. Terracing may be used to accomplish the necessary sloping. If reseeding/revegetation is not possible during the fall, this will resume the following summer, depending upon timing of the reseeding/revegetation operation and weather.
Figure 2. Site plan with Cells 1, 2, 3, 4, and 5

**Bulk Fuel Storage:**

Fueling activities will take place in the staging area. Fuel will be delivered to the site via barge and stored in steel double wall above-ground storage tank (AST). The anticipated storage containers are:

- Two 4,000 gallon diesel fuel ASTs,
- 500 gallon tank mounted on a service truck,
- 200 gasoline AST,
- two 55 gallon hydraulic oil drums, and two 55 gallon motor oil drum. (Rounded up total 9,000 gallons).
Fuel transfer operations at the site will occur using a pump and fuel hose with a drip pan placed under the nozzle. Trained personnel operating the fuel pump will carefully monitor all fuel transfers. Spill Response Kits (Spill Kit) will be kept on-site for quick response in the event of a spill. An assigned knowledgeable employee will also visually inspect the dispensers at the fuel transfer area for indications of deterioration and discharges, including the transfer hoses and fittings.

Multiple Spill Kits will be located at the staging area, on-site, throughout the life of the project. Two Spill Kits will be stored inside a Conex in the fuel storage area. A Spill Kit will also be located in the mobile refueling truck cab. Spill Kits will be clearly labeled. When materials from a Spill Kit are used, they will be replaced as soon as possible.

Federal laws require a Spill Prevention, Control and Countermeasure Plan (SPCCP) be developed for any above ground fuel storage capacity greater than 1,320 gallons. The Borough having more stringent standards requires a SPCCP be prepared for bulk fuel storage greater than 660 gallons, as defined in Title 9.04.070 Definitions “Bulk fuel storage.” The applicant has submitted a draft SPCCP and states the SPCCP will be finalized after the project is permitted and a contractor is selected. A final copy of the approved SPCCP plan must be provided to the Planning Department and filed for the administrative record. This copy must be submitted before the commencement of project activities.

**Barge Loading and Unloading:**

As material is extracted and/or processed it will be transported directly to a barge located at the northern end of the project site. The loaded barge will be towed/pushed to the City of
Kotzebue or other communities for unloading and transportation to project sites for processing and/or placement.

**Current Approvals:**

- US Army Corps of Engineers, Permit Application, Section 404 wetlands permit, Reference #: POA-2020-00461—pending
- USFWS/NOAA Fisheries - Section 7 Consultation—pending
- State of Alaska, Alaska Department of Environmental Conservation, Wastewater Discharge Authorization/401 Certification—pending

**Permit Authorization and Documentation:**

AZAR submitted a Title 9 Land Use Permit application (20-02-107) for the following “Uses”: Gravel extraction and Bulk fuel storage (Conditional Uses in the Subsistence Conservation District).

The Title 9 application was received on October 9, 2020. On November 20, 2020 the Borough Planning Department deemed the application was complete. A draft permit was issued and posted for public comment on November 20, 2020. There were no public comments for this project.

Permit fees due totaled to $500.00. ‘Gravel extraction’ as a use is $250 and ‘bulk fuel storage’ as a use is $250.

Pursuant to Northwest Arctic Borough Code (NABC) 09.12.030, the Planning Commission has the authority to permit:

- Gravel extraction (Conditional Use in the Subsistence Conservation District)
- Bulk fuel storage (Conditional Use in the Subsistence Conservation District)

**Permit Terms and Conditions:**

1. William G. Azar (AZAR) shall comply with the terms of the permission, permits and/or agreements granted by the federal government, State of Alaska, Northwest Arctic Borough, NANA Regional Corporation and other applicable agencies.

2. AZAR shall comply with any and all applicable local, borough, state and federal laws. Failure to abide by any part of this permit, or violations of any pertinent borough ordinances or state or federal law or regulation, will be considered grounds for revocation of the permit or denial of future permit requests and may result in issuance of fines or other penalties. This provision applies to all persons working under the authority of this permit.

3. The Permittee is responsible for ensuring that all employees, contractors, sub-contractors, and any other persons working for the permittee and conducting activities allowed by this permit are familiar with and adhere to the conditions of this permit.
4. All trash and human waste generated at the property must be properly disposed of in accordance with Northwest Arctic Borough Ordinance 9.25.020(M), establishing standards disposal of refuse, human body waste, and chemicals. All remedial activities shall comply with any and all other applicable state and federal laws, including all applicable hazardous waste and disposal requirements, all waste disposal and landfill requirements, and all open burning and air quality standards.

5. During and after mining activities, the permittee must conduct activities in a manner to maintain natural drainage patterns; water shed protection, and permafrost stability, to prevent runoff and erosion into water supplies and to minimize alteration of vegetation.

6. Loading and unloading activities shall be planned and conducted in a manner to minimize or eliminate siltation, surface runoff, and pollution to Hotham Inlet.

7. All project activities shall utilize measures to minimize noise and nuisance affecting surrounding residential and camp properties including excessive noise, fumes, odors, glare, smoke, vibration, dust, litter, interference in any telephone, radio or television receivers, and/or significant line voltage fluctuation.

8. AZAR shall post public notices (at the Borough offices and US Post Office at a minimum) and provide public service announcements on KOTZ radio informing the community regarding the date and times of barge hauling operations between Kotzebue and Nimiuq Point to promote boater safety.

9. When traveling at night or adverse weather, AZAR shall ensure the operators of the tug and barge operate all navigation lights and ensure the lights are functional. During adverse weather the operational speeds shall be reduced for added safety. In addition, barge/tug Lights, radar equipment, VHF Radios and Horns shall be maintained in good working order for added safety.

10. Uses permitted shall cease upon the discovery of archaeological, prehistoric, historic or cultural resources during the mining activities, and AZAR shall immediately contact both the Planning Coordinator at the NAB Planning Department and Alaska State Historic Preservation Office to determine the conditions to continue.

11. The siting, design, construction and monitoring of the project activities are required to minimize alteration of shorelines, water courses, wetlands, and minimize significant disturbance to important habitats, and avoid critical fish, and other species' migration periods.

12. Any development by the project in floodplains and shoreline areas are to be constructed to minimize loss of life or property due to seasonal flooding, ice movement, and shoreline erosion.
13. Bulk fuel and petroleum storage (onshore and offshore) are required to have an oil spill control and clean-up plan. The plan must contain a risk analysis indicating where oil spills are likely to flow under various sets of local meteorological, oceanographic, hydrologic or soil conditions. Impact areas must be identified and strategies fully developed to protect environmentally sensitive areas; the spill control and clean-up equipment which is available to the operator and the response time required to deploy this equipment under the various scenarios must be contained in the risk analysis.

Depending on the nature of the activity, adequate spill response equipment may be required to be kept on-site. Duplicative borough oil spill and clean-up plans will not be required where a state or federally approved plan meeting these criteria is in effect.

14. Project equipment/vehicle servicing and fueling operations are prohibited within 100 feet of any surface water body, including any rivers, drainage channels, sloughs and lakes.

Equipment and vehicles are to be maintained to eliminate or minimize any fuel spills and fluid leaks. Equipment and vehicles must be monitored prior to use for hydraulic leaks. If equipment is in continuous use, it shall be inspected daily for hydraulic leaks.

Project equipment shall not be abandoned.

15. AZAR shall immediately notify the borough (at least within 24 hours) of any damage to the tundra and shoreline due to project activities in excess of those identified in or different from those noted in the permit application (21-02-107), including but not limited to scraping of vegetation and spill of fuel or other chemicals.

16. AZAR shall immediately notify the Borough (at least within 24 hours) of any change in the project plans and seek modification of the permit. AZAR shall suspend uses until approval is given by the Planning Director/Title 9 Administrator. If the proposed action(s) constitutes an emergency, AZAR shall comply with NABC 9.16.040 for emergency actions and shall make reasonable efforts to conduct modified uses in a manner that avoids or minimizes significant harm to the environment, consistent with the need to protect property and human life.

17. AZAR shall be required in consultation with the Administrator to post a cash bond or other suitable surety in an amount and form consistent with the requirements of NABC 9.08.040(A) to guarantee performance of all obligations under this permit.

18. AZAR is subject to all penalties and civil actions pursuant to section 9.08.240 for violation of the permit conditions and stipulations prescribed herein.

19. The Nimiuk Point area, where project activities are set to occur, fall within a priority subsistence use area designated by the Borough Code (9.25.045—Kobuk/Selawik Lakes Subsistence Conservation Sub-District). In summary, Borough subsistence policy states that uses and activities in this area shall not significantly interfere with or have an adverse impact on subsistence activities such as fishing, trapping, waterfowl hunting, berry picking, egg gathering and caribou hunting. Moreover, commercial or industrial uses in
the Nimiuks Point area during caribou migration are prohibited. All project activities shall utilize reasonably economically viable measures to avoid or minimize disrupting subsistence use.

20. During the fall caribou migration, AZAR or any project contractors shall not, during the migration of caribou, locate any operation and/or equipment so as to block or cause diversion of the migration of caribou. AZAR and/or any project contractors shall cease any activity that may interfere with the seasonal fall caribou migrations and/or caribou summer movements, such as marine, ground and airborne transports, ground and airborne surveys or movement of equipment, until such time as the migration or summer movements have cleared ¾ of a mile from the location of the project activity. Concern for human safety will be given special consideration when applying this policy.

As a general guideline, caribou migration means an area where 500 or more caribou are travelling or congregating. However, during the seasonal fall period of mid-August through mid-November, AZAR shall take extra precautions to avoid deflecting even small numbers (e.g. group sizes of 5-10) of the first caribou moving through the area as these groups/bands set trails as “lead caribou” that subsequent caribou later follow during the migration. The intent of these guidelines are to ensure free passage of caribou through the area to avoid impacting caribou and the communities that historically and currently depend upon it as well as preserving existing and important adjacent land uses. These guidelines may be revised based upon updated information and research (including local traditional knowledge) which is approved by the Borough Planning Commission.

21. All project activities shall utilize measures to avoid or minimize disrupting wildlife and bird migration, or subsistence activities including fishing, trapping, waterfowl hunting, egg gathering, berry picking, wild greens, muskrats, seals, moose and caribou hunting. AZAR will ensure reasonable access to subsistence users to subsistence resources.

22. Native allotments and camp sites are common to the area, and AZAR shall ensure that staff/personnel/contractors do not disturb or trespass on these areas.

23. The propulsion engines / transmission shall be either turned off or disengaged so that the propellers do not rotate while being loaded at the landing site except in an emergency or severe weather conditions.

24. AZAR shall avoid subsistence set nets along the transit route between their Kotzebue facilities and the Nimiuks Point site. All incident reports or conflict shall be immediately reported to the borough (at least within 24 hours) for corrective action.

25. Vehicles, vessels and aircraft that are likely to cause significant disturbance must avoid areas where species that are sensitive to noise or movement are concentrated. Concentrations may be seasonal or year-round and may be due to behavior (e.g., flocks or herds) or limited habitat (e.g., polar bear denning, seal haul-outs). Horizontal and vertical buffers will be required where appropriate. Concern for human safety will be given special consideration when applying this policy.

When adverse effects are likely and cannot be avoided, the Borough Planning
Director/Title 9 Administrator may require AZAR to prepare and submit a mitigation plan to minimize impacts. The effects addressed in this standard may result from a single project or from a series of projects. The mitigation plan, if required, shall be approved by the borough planning director and/or borough planning commission.

26. At the conclusion of each season the Borough Planning Department shall evaluate the effectiveness of the permit conditions. The Title 9 Administrator shall be authorized to adopt corrective measures for ineffective or inadequate permit conditions.

27. At the completion of each season, the permittee shall file a written report with the Borough Planning Department describing the following:
   (a) aggregate number of trips between Kotzebue and the Nimik Point site supported with maritime transit logs,
   (b) complete report of any fuel or other hazardous substances discharges and clean-up activities completed,
   (c) report the incidents of caribou migration and dates/times of ceased operations for allowing migration of caribou,
   (d) report the incidents of commercial fishing periods and dates/times of ceased operations for allowing fisheries to be conducted,
   (e) report of incidents involving subsistence fishing set nets within the transit route describing corrective measures taken,
   (f) other matters as reasonably required by the Administrator/Planning Director.

28. AZAR shall, if requested by the Administrator, provide periodic activity reports to the following entities: the City of Kotzebue, the Native Village of Kotzebue, and the Kotzebue Fishermen’s Association.

29. Access by Borough personnel and their agents. Authorized personnel and/or their agents of the Northwest Arctic Borough when on official business and displaying proper identification shall be allowed access to the sites without interference. Borough personnel and/or agents may conduct scheduled or unscheduled inspections or tests to determine compliance with this permit or respond to emergency situations.

30. AZAR will not commence ANY project activities (to include barging and hauling of aggregates) before June 1st and shall cease ALL operations (to include barging and hauling of aggregates) by 11:30 p.m. October 15th of each season.

31. This permit will expire December 31, 2025, unless revoked by the Title 9 Administrator and/or AZAR.
NORTHWEST ARCTIC BOROUGH

Conditional Use Permit Approved by the Northwest Arctic Borough Planning Commission through Resolution PC 20-14
Authorized signatory: Eva Harvey, Planning Director/Title 9 Administrator

December 17, 2020
Date

CC: Native Village of Kotzebue, City of Kotzebue, NANA Regional Corporation, Maniilaq Association, Kikiktagruk Inupiat Corporation, Alaska Department of Transportation & Public Facilities

Posted at: www.nwabor.org
NORTHWEST ARCTIC BOROUGH PLANNING COMMISSION
RESOLUTION PC-20-14
A RESOLUTION OF THE NORTHWEST ARCTIC
BOROUGH PLANNING COMMISSION APPROVING
WILLIAM G. AZAR’S
DRAFT CONDITIONAL USE PERMIT #107-03-21,
AND FOR RELATED PURPOSES

WHEREAS: The Northwest Arctic Borough Planning Department received a
Title 9 Permit Application (21-02-107) on October 9, 2020 from Maria Lewis, MLP &
Associates for the following Uses in the Subsistence Conservation District:
• Gravel extraction; and
• Bulk fuel storage; and

WHEREAS: On November 20, 2020, the Borough Planning Department deemed
the application complete with all necessary information; and

WHEREAS: The Borough Planning Department has published a public notice
for this permit on November 20, 2020, as required in borough code 9.20.030; and

WHEREAS: The Northwest Arctic Borough Planning Commission has the
authority to approve: Gravel extraction and Bulk fuel storage in the Subsistence
Conservation District by conditional use permit according to borough code 9.12.030,
following a public hearing as required under borough code 9.20.030E.

NOW THEREFORE BE IT RESOLVED, The Northwest Arctic Borough Planning
Commission hereby authorizes the Planning Director/Title 9 Administrator to approve
the DRAFT Conditional Use Permit #107-03-21 dated November 20, 2020, as discussed
during the commission meeting;


[Signature]
Harold Lambert, Planning Commission Chair

SIGNED AND ATTESTED TO THIS 16TH DAY OF DECEMBER, 2020.

[Signature]
Helena Hildreth, Borough Clerk